

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT NO. 215 66 4383
Issued to: Philip A. Booher

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

2093

Philip A. Booher

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 5.30-1.

By order dated 16 April 1976, an Administrative Law Judge of the United States Coast Guard at Corpus Christi, Texas revoked Appellant's seaman documents. The specification found proved alleges that while serving as a wiper on board the United States SS OVERSEAS ANCHORAGE under authority of the document above captioned, on or about 14 December 1975, Appellant wrongfully assaulted and battered a fellow crew member, Donald Gusis, with a deadly weapon, to wit, a pipe, while the vessel was at Novorossiysk, USSR.

At the hearing, Appellant elected to act as his own counsel and entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence voyage records of the SS OVERSEAS ANCHORAGE; an injury report concerning Mr. Gusis; sketches of the room occupied by Gusis and Booher; the weapon allegedly used; the testimony of the victim; and sworn statements of three crew members.

In defense, Appellant offered in evidence his own testimony; testimony of the seaman on watch the night of the incident; and sworn statements of three crew members.

At the end of the hearing, the Judge rendered an oral decision in which he concluded that the charge and specification had been proved. He then served a written order on Appellant revoking all documents, issued to Appellant.

The entire decision and order was served on 29 April 1976. Appeal was timely filed.

FINDINGS OF FACT

On 14 December 1975, Appellant was serving as a wiper on board

the United States SS OVERSEAS ANCHORAGE and acting under authority of his document while the ship was in the port of Novorossiysk, USSR. Donald Gusic and the Appellant shared a room for a period of approximately six months prior to 14 December 1975. During that time difficulties arose between the two men, but neither reported the problems to anyone in authority. On the evening of 14 December 1975, both men had been drinking intoxicants. At about midnight, Mr. Gusic returned to the vessel and proceeded to his room. Appellant was already in the room. An argument ensued and Gusic asserted that their differences were to be settled that night and he then shoved Appellant against the bulkhead. This altercation did not result in any injury and is not subject matter of the present charge.

Appellant left the room and informed the third mate of the situation who advised him to sleep in the hospital for the night and refer the situation to the master the following day. He, however, returned to his room about 10 minutes later with a piece of pipe taken from the engine room. Entering his quarters, Appellant struck the reclining Gusic across the legs with the pipe, while threatening to kill him. Gusic arose from his bunk, grasped the pipe, and chased him out of the room and down the passageway, hitting him once on the arm. At that point the two men were separated by the third mate.

As a result of the attack, Gusic suffered a broken ankle and bruises and cuts on his legs. A cast was placed on one of his ankles. He was hospitalized in the USSR for eight days, was later required to use crutches, and was unfit for duty during the return voyage to the United States. Appellant remained with the ship until the end of the voyage.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is contended that:

- I. Appellant's misunderstanding of the seriousness of the proceedings and ignorance of the possible punishment led him to waive aid of counsel. Appellant contends that such waiver resulted in his being unable to forcefully marshal existing evidence and led to an order more severe than if he had been adequately represented.
- II. The revocation order is too severe in that mitigating circumstances leading up to the incident were not adequately taken into account and the order does not reflect punishments given out in similar circumstances.

APPEARANCE: Louis L. Robein, Jr. Law Office of Dodd, Barker,

OPINION

I.

Appellant maintains that he was placed at a grave disadvantage since he was without services of a lawyer at the hearing. Although his right to counsel was waived at the initial hearing, Appellant maintains that such a waiver was not knowingly made. Such an assertion is without merit. The record clearly establishes that Appellant was advised of his right to counsel by the Investigating Officer prior to the hearing and again at the hearing by the Administrative Law Judge. Appellant was carefully advised of the possible consequences of the proceeding and admitted he understood their nature. Nevertheless, Appellant chose to proceed without an attorney. There is no evidence on record to show that this decision was not freely made, and he cannot now be heard to complain, after the hearing, that he did not adequately represent himself.

Appellant's contention that lack of counsel led to a more severe order is also without merit. Review of the record indicates that the Administrative Law Judge conducted the hearing in a fair and orderly manner, and rendered his decision in light of evidence presented. It is sheer speculation on the part of Appellant to suggest the presence of an attorney on his behalf would have significantly changed the hearing's income.

II.

Appellant also maintains that the revocation order is too severe in that mitigating circumstances leading up to the incident were not adequately taken into account and the order herein appealed exceeds the average order sustained for similar offenses. This argument has some merit.

The Administrative Law Judge made specific findings as to prior difficulties between Appellant and Gusic and discussed such differences in his opinion. Substantial evidence indicated that Appellant was subjected to continuous harassment by his shipmate. Neither prior altercations, nor abusive language however, provides adequate justification for Appellant assaulting and battering Mr.

Gusis.

The promotion of life at sea and the welfare of individual seamen must be of paramount concern to the Coast Guard in revocation decisions. A lack of self restraint can, and frequently does lead to serious consequences, especially when the result is assault and battery.

Appellant, however, had a previously unblemished record of service at sea since 1972. Additionally statements incorporated into the record on appeal indicate that Appellant is highly unlikely to again commit such an offense if allowed to retain his seaman's document. Appellant correctly maintains that such factors have been taken into account by Administrative Law Judges in similar proceedings. (See Commandant's Appeal Decisions 1975 (GRADDICH); 2047 (VALLADARES); and 2101 (VELEZ).

In view of these circumstances and decisions cited, an order of revocation would seem punitive rather than remedial, as is the proper nature of these proceedings. I have noted that Appellant's record indicates a short period of exposure to life at sea. It is hoped that the remedial purposes of this proceeding will have a significant effect on Appellant's future conduct in dissuading him from further actions of this nature. On the basis of the above, it is my opinion that the order should be modified to provide for the outright suspension of Appellant's documents for twelve months.

CONCLUSION

The charge and specification alleging an assault and battery have been proved by substantial evidence, and the findings of the Administrative Law Judge should be supported. Appellant was not denied counsel during the proceedings since he specifically waived such assistance at the hearing. The order of revocation is deemed excessive under the circumstances. Accordingly, the order is modified to provide for the outright suspension of Appellant's merchant mariner's Documents for twelve months.

ORDER

The order of the Administrative Law Judge dated at New Orleans, Louisiana on 26 April 1976, is AFFIRMED as MODIFIED.

E. L. PERRY
VICE ADMIRAL, U.S. COAST GUARD
ACTING COMMANDANT

Signed at Washington, D. C., this 28th day of January 1977.

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